

HOUSE BILL REPORT

HB 1580

As Reported by House Committee On:
Agriculture & Natural Resources
General Government Appropriations

Title: An act relating to establishing a pilot local water management program in one qualified jurisdiction.

Brief Description: Establishing a pilot local water management program in one qualified jurisdiction.

Sponsors: Representatives Kessler, Walsh, Santos, Morris, Blake, Takko, Chandler, McCoy, Newhouse, Kretz, Linville, Jacks, Ormsby, Van De Wege, Hurst, Warnick, Nelson, Hinkle, Springer and Kenney.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/30/09, 2/5/09 [DPS];

General Government Appropriations: 2/19/09, 2/25/09 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- Authorizes the creation of a Water Management Board with designated membership, authority, duties, and responsibilities.
- Authorizes water banking for water rights on a temporary or permanent basis.
- Authorizes water users in a planning area to develop a local water plan.
- Provides a system with terms, guidance, elements, and criteria for the local water plan and water banking.
- Designates the pilot area as Water Resource Inventory Area 32.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Blake, Chair; Jacks, Vice Chair; Chandler, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Kretz, Lias, McCoy, Nelson, Ormsby, Pearson, Van De Wege and Warnick.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Jaclyn Ford (786-7339)

Background:

Water Resource Inventory Areas.

The Water Resources Act (Act) directs the Department of Ecology (DOE) to develop a comprehensive state water resource program for making decisions on future water resource allocation and use. The Act permits the DOE to develop the program in segments. Under the Act, the DOE has divided the state into 62 Water Resource Inventory Areas (WRIA).

Modifying Existing Water Rights.

There are several fundamental elements of a water right. One is its priority. Other elements of the water right include the amount of water that may be withdrawn from a particular water source, the time of year and point from which the water may be withdrawn, how the water can be used (such as an agricultural or municipal use), and where the water may be used. Certain elements of a water right may be modified with the approval of the DOE if the modification would not impair other existing water rights. An approved modification does not affect the priority date of the right. Alterations in water rights are referred to in statute as transfers, changes, and amendments of water rights.

Watershed Planning.

State watershed planning laws provide a process for conducting watershed planning through a locally initiated process. If planning is conducted under this process, it must include a component on current and future water availability and use. It may include components regarding in-stream flows, water quality, and habitat.

Walla Walla Comprehensive Water Management Structure.

In 2008 the Legislature provided the DOE \$195,000 from the General Fund for Fiscal Year 2009 to design a comprehensive water management structure for the Walla Walla River Basin.

The Legislature requested that the structure address the allocation of functions, authorities, resource requirements, and issues associated with interstate watershed management of the basin.

A report was written to the Legislature outlining the proposed governance and water management structure in December 2008.

Summary of Substitute Bill:

The Water Management Board.

The initiating entities consist of the county boards of commissioners within the planning area, the city council of the largest Washington city in the planning area, the largest water user in the planning area, and all affected federally recognized tribes within the planning area.

Initiating entities may collectively petition the DOE to establish a Water Management Board (Board). The initiating entities must demonstrate that there is community support for the development of a local water management plan, that there is commitment to enhance in-stream flows for fish, and that there is an adequate monitoring network in place. Before approving the creation of a Board, the DOE must require that an in-stream flow rule is in place in the planning area, the planning area is within a fish critical basin with severely impaired flows, and the watershed planning unit has completed watershed and salmon recovery implementation plans. The DOE must also give strong consideration to basins that have completed a judicial proceeding to adjudicate water rights.

Composition of the Water Management Board.

The Board must be composed of: (1) representatives from each of the counties within the planning area; (2) a representative from the largest city in the planning area; (3) a representative of the largest water user in the planning area; (4) a representative appointed by the conservation districts in the planning area; (5) a representative of the planning area water users; (6) a representative of environmental interests in the planning area; and (7) a representative of citizens at large. In addition, all affected federally recognized tribes within the planning area must be invited to participate and are able to appoint one member to the Board. Each Board member serves a two-year term and may be reappointed.

The Policy Advisory Group and the Water Resource Panel.

The Board will create a policy advisory group that must assist and advise the Board in, among other things, coordinating and developing water resource programs, planning, and activities within the planning area. The Board will also create a water resource panel that must provide technical assistance for the development of the local water plan, advice to the Board on the criteria for establishment of local water plans, and suggestions for the approval, denial, or modification of the local water plans.

Duties of the Water Management Board.

The Board must assume all duties, responsibilities, and activities of the watershed planning unit, as well as develop strategic actions for the planning area, make the water management program effective, administer the local water plan process, oversee local water plan implementation, manage banked water, acquire rights, represent the interests of the planning area, and enter into agreements with water right holders to not divert water.

The Board may provide for its own funding by adopting fees or soliciting or accepting grants, loans, or donations.

Reports to the Legislature.

The Board, in collaboration with the DOE, must provide reports to the Legislature every three years beginning in 2012. The reports must summarize the actions, funding, and accomplishments of the Board, as well as any recommendations for improvement of the local water plan process.

The Water Bank.

The Board may establish a mechanism to bank water within the planning area. The Board may accept a surface water or groundwater right for banking on a permanent or temporary basis. Temporarily banked water remains in the ownership of the water right holder, and

permanently banked water must be transferred to the state as a trust water right. The banked water rights or banked portions of water rights are available under the local water plan for stream flow enhancement.

Water rights banked for in-stream flow must not have an extent and validity review and may not be authorized for other purposes. In addition, banked water rights or banked portions of water rights are not subject to loss by forfeiture. When a temporary deposit is withdrawn from banking, the time period that the water right was banked may not be included in the five years of prior water use review under the relinquishment statute.

The Local Water Plan.

The local water plan may be submitted by a water user or group of water users to the Board for approval by the Board and the DOE. The local water plan may be effective for a term of one to 10 years. The Board must provide a 30-day public notice period on the proposed local water plan. The final decision of the DOE on the local water plan is appealable to the Pollution Control Hearings Board.

A local water plan expires by its own terms, by withdrawal of one or more water users to the local water plan, or upon agreement by all parties to the contract. If the local water plan operates for more than five years and then expires, the water users may request that the elements of the local water plan be made permanent authorizations and conditions for use of the water rights.

Water rights in the local water plan are not subject to a review of the extent and validity of the water right, nor subject to loss by forfeiture.

Location of the Pilot Program.

The pilot plan of the local water management program is located in WRIA 32.

Expiration of the Act.

This act expires June 30, 2019.

Substitute Bill Compared to Original Bill:

The substitute bill changes how tribes are described within the definition of "initiating entities" from "all federally recognized tribes owning land" to "all affected federally recognized tribes," and when describing community support from "affected tribes" to "affected federally recognized Indian tribes." The substitute bill changes "water resource panel" to "policy advisory group" when describing which group must assist and advise the Board in coordinating and developing water resource-related programs. The substitute bill changes the conflict of interest language to provide an example of what constitutes a conflict of interest, and gives the Board the authority to oversee local water plan implementation. The substitute bill removes references to interstate representation and authority to make interstate agreements by the Board. The substitute bill adds clarifying language about banking water and removes references to a water bank. The substitute bill adds clarifying language that a water right holder's rights are not foreclosed or diminished when applying for a change of a water right to the DOE, and that nothing in the bill diminishes or changes existing water rights unless agreed upon by the water rights holder. The substitute bill adds a

requirement that the local water plan include performance measures for tracking improved stream flows. The substitute bill changes the location of the pilot program from "a basin located east of the crest of the Cascades in a county with a population between 55,000 and 60,000 people, as reported in the 2000 census" to "WRIA 32, as defined in chapter 173-500 WAC as it existed on January 1, 1997." The substitute bill adds a cross reference to the watershed planning program to clarify that the watershed planning unit dissolves when a Board is created.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Walla Walla River Basin (Walla Walla) is a story of success and progress. This bill was originally Representative Bill Grant's, and it will enhance stream flows and allow flexibility for water users. The cooperation in the Walla Walla is incredible. This is an important step; it will improve the management of water in the Walla Walla, and allow the Walla Walla to move forward in watershed planning. This will be a strong program for others to model. This is a balanced approach. Progress has been made in the Walla Walla. In-stream and out-of-stream needs must both be met. This is an innovative idea and should be replicated across the state.

(With concerns) A water well industry representative or individual water well owners should also be on the Board. It is not known how effective water banking will be or how it may work.

(Opposed) None.

Persons Testifying: (In support) Representative Kessler, prime sponsor; Greg Tompkins, Kevin Scribner, and Cathy Schaeffer, Walla Walla Watershed Alliance; Hedia Adelsman, Department of Ecology; Kathryn Brigham, Confederated Tribes of the Umatilla Indian Reservation; Norman MacLeod; Bill Clothier, Washington State Groundwater Association; Mo McBroom, Washington Environmental Council; Kathleen Collins, Washington Water Policy Alliance; and Peter Dykstra, Washington Rivers Conservancy.

(With concerns) Darcy Nonemacher, American Rivers.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 14 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Owen Rowe (786-7391)

Summary of Recommendation of Committee On General Government Appropriations Compared to Recommendation of Committee On Agriculture & Natural Resources:

The second substitute bill deletes "Indian" from "affected federally recognized Indian tribes" in order to make language consistent with similar language throughout the bill. The term "water bank activities" is replaced with "water banking activities" in order to make the language related to water banking consistent throughout the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a result of irrigators, farmers, tribes and landowners in the Walla Walla basin coming together to solve water issues in the area. This process has resulted in a solution that will provide water for people, fish, and farms. The administrative costs can be absorbed by the Department of Ecology (DOE), and the local Water Resource Inventory Area (WRIA) can apply for funding through an existing grant program at the DOE. This pilot can be used as a model for other WRIs to use in the future. The Umatilla, Cayuse, and Walla Walla tribes have been a partner in the development of this bill and they support its passage.

(Opposed) None.

Persons Testifying: Representative Kessler, prime sponsor; Mike Moran, Umatilla Tribe; Hedia Adelman, Department of Ecology; and Greg Tompkins, Walla Walla County.

Persons Signed In To Testify But Not Testifying: None.